

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
EAST HILL COMMUNITY)
WELL COMPANY,)
Appellant,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
AND CITY OF KENT,)
Respondents.)

PCHB No. 79-96

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This appeal from the issuance of a permit by Department of Ecology (DOE) to the City of Kent under Ground Water Application No. 23285 came on for formal hearing before the Pollution Control Hearings Board, Nat W. Washington, Chairman and David Akana, member, in Kent, Washington on October 31, 1979. Nancy E. Curington presided.

Appellant East Hill Community Well Company was represented by Robert L. Couture, president. Respondent DOE was represented by Laura E. Eckert, Assistant Attorney General. Respondent City of Kent was

1 represented by Donald E. Mirk, City Attorney.

2 Having heard the testimony, having examined the exhibits, and
3 having considered the contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 On May 21, 1979 respondent DOE issued its Findings of Fact and
7 Decision. Appellant requested a hearing to contest the findings in a
8 letter dated June 19, 1979, addressed to the Pollution Control
9 Hearings Board. On June 22, 1979, the Board issued an Order joining
10 the Permittee, City of Kent, as Additional Party Respondent; a copy of
11 the order was sent to all parties, including respondent DOE.

12 DOE contends that it did not receive a copy of the Notice of
13 Appeal from appellant and was first informed of the existence of the
14 appeal when the Board issued its Order joining the Permittee.
15 However, no evidence was offered regarding receipt of the Notice of
16 Appeal.

17 II

18 Respondent City of Kent (hereinafter referred to as "City")
19 applied for a permit to appropriate public ground water for municipal
20 water supply on January 4, 1979. The original application requested
21 an instantaneous withdrawal of 1400 gallons per minute; the amount was
22 later changed to 2100 gallons per minute. The proposed well site is
23 within a few hundred feet of appellants' wells, which are 248' and
24 286' deep. The proposed well would be at approximately the same
25 depth. Appellant does not dispute that there is sufficient water
26 available to serve both the proposed well and the appellants' existing
27 wells.

1 Appellant protests the proposed well because of apprehension that
2 the appellants' property value would diminish in the future due to the
3 proximity to the proposed well to the appellant's property line,
4 possibly foreclosing development on the property. Appellant has no
5 immediate plans to sell its property.

6 III

7 Any Conclusion of Law which should be deemed a Finding of Fact is
8 hereby adopted as such.

9 From these Findings the Board comes to these

10 CONCLUSIONS OF LAW

11 I

12 Respondent DOE requested the Board to dismiss this appeal because
13 it was not "perfected" according to the provisions of RCW 43.21B.230.
14 That statute states, in relevant part:

15 Any person having received notice of
16 a denial of a petition, a notice of determination,
17 notice of or an order made by the department
18 under the provisions of this 1970 amendatory
19 act may appeal, within thirty days from
20 the date of the notice of such denial, order,
21 or determination to the hearings board. The
22 appeal shall be perfected by serving a copy of
23 the notice of appeal upon the department or
24 air pollution authority established pursuant to
25 chapter 70.94 RCW, as the case may be, within the
26 time specified herein and by filing the original
27 thereof with proof of service with the clerk of
the hearings board. . . .

22 However, since there was nothing more than the allegation that the
23 appeal was not properly filed, this Board cannot dismiss the appeal.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

II

The provisions of RCW 90.03.290 require that water be available for appropriation for a beneficial use, that the proposed appropriation not impair existing rights and that it not be detrimental to the public welfare. The appellant does not contend that its rights, or those of anyone else, would be impaired, or that the water is not available, or that the appropriation would be detrimental to the public welfare. Accordingly, the permit issued by DOE should be affirmed.

III

The Board notes that it has no jurisdiction to address the appellants' concerns as to possible diminished value of its property if the proposed project is completed. That matter would properly be subject to the jurisdiction of another forum.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters the following

ORDER

The permit issued by DOE to the City of Kent is affirmed.

DATED this 11th day of December, 1979

POLLUTION CONTROL HEARINGS BOARD

Ray H. Washington
RAY H. WASHINGTON, Chairman

David Akana
DAVID AKANA, Member